

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MATTHEW L. LOTT,

Plaintiff,

Case No. 1:20-cv-1255

v.

Hon. Hala Y. Jarbou

CORIZION et al.,

Defendants.

ORDER

This is a civil rights action brought by a state prisoner under 42 U.S.C. § 1983. This matter is presently before the Court on Plaintiff's notice of appeal, (ECF No. 50), and his motion for leave to appeal *in forma pauperis* (ECF No. 52). Plaintiff is appealing the Court's December 29, 2022, order, (ECF No. 48), denying his motion for relief from judgment, (ECF No. 46).

By order and judgment entered May 5, 2022, (ECF Nos. 38, 39), the Court dismissed Plaintiff's remaining claims. Plaintiff filed a late notice of appeal relating to the order and judgment. Plaintiff was granted leave to proceed *in forma pauperis* with respect to his action in this Court, and under Federal Rule of Appellate Procedure 24(a)(3), Plaintiff would have been permitted to continue that status on appeal unless this Court certified that an appeal would not be taken in good faith. That provision is simply a specific example of the prohibition in 28 U.S.C. § 1915(a)(3), which provides "[a]n appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith." Magistrate Judge Phillip J. Green, in his report and recommendation, found that an appeal would be frivolous and, therefore, would not be filed in good faith. (R&R, ECF No. 34, PageID.244.) The Court adopted the report and recommendation

as the opinion of the Court. (Order, ECF No. 38.) Accordingly, Plaintiff was not permitted to continue his *in forma pauperis* status on appeal. (ECF No. 43.)

Plaintiff's filing of his motion for relief from judgment does not change his eligibility to continue his *in forma pauperis* status on appeal. As noted in the Court's December 29, 2022, order denying relief from judgment, Plaintiff's motion was entirely lacking in merit and, indeed, confirmed the propriety of the Court's dismissal of the remaining claims. (ECF No. 48.) Thus, for all of the reasons stated in Magistrate Judge Green's report and recommendation, as adopted by the Court, Plaintiff's present appeal would also not be taken in good faith. Therefore, he may not continue his *in forma pauperis* status on appeal.

Plaintiff has twenty-eight (28) days from the date of entry of this order to pay the entire filing fee for appealing a civil action, which is \$505.00, to the Clerk of this Court. Alternatively, Plaintiff may file a motion for leave to proceed *in forma pauperis* in the Court of Appeals pursuant to the requirements set forth in Fed. R. App. P. 24(a)(5). Plaintiff's failure to comply with the order may result in dismissal of this appeal without prejudice by the Sixth Circuit Court of Appeals for want of prosecution. Accordingly,

IT IS ORDERED that Plaintiff's motion for leave to proceed on appeal *in forma pauperis* (ECF No. 52) is **DENIED**.

Dated: February 15, 2023

/s/ Hala Y. Jarbou

HALA Y. JARBOU

CHIEF UNITED STATES DISTRICT JUDGE

SEND REMITTANCES TO:

Clerk, U.S. District Court
399 Federal Bldg.
110 Michigan St., N.W.
Grand Rapids, MI 49503

All checks or other forms of payment shall be payable to "Clerk, U.S. District Court" and must indicate the case number in which the payment is made.